(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: AUG 0 6 2015

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied Form I-140, Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. We will sustain the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner proposes to work as a mechanical engineering researcher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a legal brief.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B)Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the beneficiary seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the beneficiary's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the beneficiary, rather than to facilitate the entry of a beneficiary with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given beneficiary seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that beneficiary cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

II. FACTS AND ANALYSIS

The petitioner filed the Form I-140 on August 19, 2013, at which time he was working as a postdoctoral fellow at [redacted] In an accompanying introductory statement, the petitioner indicated that his research focuses on developing numerical models to predict the effects of shot peening, a process used to strengthen and increase the fatigue life of aerospace materials. The petitioner stated that his "research projects have resulted in major breakthroughs in manual shot peening methods and simulation models for use in aerospace engineering research," and that his work has "largely influenced" the field.

The petitioner submitted copies of journal articles that he has written or co-written, and evidence of a citation of his published work. The petitioner also submitted nine letters at the time of filing, including ones from current and former collaborators and mentors, as well as from independent professionals and academics. [redacted] now an assistant professor at [redacted] previously worked at [redacted] where he "briefly served as [the petitioner's] research advisor." [redacted] described the petitioner's graduate work in technical detail, and asserted that

the petitioner's "breakthrough multiple impact models are crucial for engineers to correctly predict the effect shot peening will have on the fatigue life of any metallic material."

an associate technical fellow at the indicated that has provided funding for the petitioner's research, including a project in which he "found that manual shot peening can drastically improve the durability of the aluminum alloy part in service." stated that "this is a major contribution to aerospace engineering that can ensure that metal materials have the best fatigue life possible."

a professor at stated that the petitioner "developed a numerical methodology to predict fatigue life," and that the petitioner's "research has undoubtedly resulted in significant advances in manual shot peening technology. [The petitioner's] pioneering research in this area laid [the] foundation for understanding the fundamental mechanism of shot peening process effects."

a professor at the stated that the petitioner transformed a model developed by into a "revolutionary numerical model" that "successfully describes the real surfaces of machined and shot peened surfaces and accurately predicts stress concentration factors." He further stated, "As a result, [the petitioner] solved the problem we had long faced of the lack of an effective method to determine the degree of stress concentration caused by the surface roughness in aerospace materials."

an independent consultant, stated that the petitioner "has been one of the driving forces behind the development of superior shot peening techniques and has produced the volume of data forming the basis of important information on optimal shot peening." also stated that the petitioner's " model has become the industry standard for predicting the fatigue life of essential aerospace and aircraft materials."

chief executive officer of a company that manufactures shot peening products, stated that he has followed the petitioner's research with "great interest" since meeting him at a conference in 2011. He stated that the petitioner's original numerical models "have elevated the industries [sic] understanding of shot peening effect."

The petitioner also submitted two letters from president of a company that manufactures shot peening products, and chairman of two committees on surface enhancement. stated that the petitioner "is widely recognized as one of the foremost experts on shot peening processes in the United States," and that his research "has been directly responsible for notably increased aircraft strength and durability and thus also safety." He also indicated that the petitioner's "work is in the process of being utilized/cited in the standard."

In response to a September 18, 2013 Request for Evidence (RFE) from the director, the petitioner stated that "because of [his] contribution to the mechanical engineering field for the aerospace

industry whereby he has set the 'new standard' for the industry, he has been . . . selected by the to service [*sic*] in the position of Committee member." In addition, the petitioner submitted new letters from and Both letters discussed recognition of the petitioner's shot peening research, and asserted that the petitioner's work is widely used in the aerospace engineering industry.

The director denied the petition on July 7, 2014, finding that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States. On March 4, 2015, the AAO issued an RFE, in part requesting additional evidence regarding industry use of the petitioner's research and further information about his proposed work in his field.

In response to our RFE, the petitioner submits a new letter from who attests that has "used [the petitioner's] multiple shot impact model for validating our experimental results before finalizing our report to customers" since 2012. The petitioner also submits a new letter from who states that "[the petitioner's] research findings in manual peening have been acknowledged and utilized at " In addition, the petitioner submits a letter from a Standards Specialist at confirming that the petitioner's role as a member of the committee is based on his status as a "technical expert" in the field. indicates in an additional letter that he highly recommended the petitioner for membership in the committee because the petitioner's work in manual shot peening methods "was regarded as very important."

Regarding his prospective work in his field, the petitioner submits evidence that he is currently employed by Department of Engineering & Design, where he will continue his research developing numerical shot peening simulation models in addition to working as a lecturer.

The record includes letters confirming the use of the petitioner's research by private companies as well as evidence regarding recognition of his work as significant. We find this evidence sufficient to demonstrate that the petitioner's research has had a degree of influence on the field of shot peening. We therefore find that this record justifies projection that the beneficiary will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

III. CONCLUSION

As discussed above, the evidence in the record establishes that the benefit of retaining this beneficiary's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

ORDER: The appeal is sustained and the petition is approved.